A **MAJLIS PEGUAM MALAYSIA v. RAJEHGOPAL VELU & ANOR**

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
AHMAD MAAROP FCJ
ABU SAMAH NORDIN FCJ
B RAMLY ALI FCJ
ZAHARAH IBRAHIM FCJ
[CIVIL APPEAL NO: 02(f)-55-08-2015(B)]
29 JUNE 2016

C ***LEGAL PROFESSION:*** *Disciplinary proceedings – Complaint against solicitor – Allegation of misconduct – Rights of solicitor – Whether entitled to know details of allegations at earliest stage – Whether specific charge ought to be framed against solicitor – Findings of misconduct by Disciplinary Committee and Disciplinary Board – Whether findings fell within scope of Complaint – Whether Disciplinary*
D *Board to give reason for rejecting Disciplinary Committee's recommendation – Legal Profession Act 1976, ss. 94(3)(o), 103D(1) – Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994*

LEGAL PROFESSION: *Disciplinary proceedings – Complaint against solicitor – Misconduct – Attesting Form 14A National Land Code in absence of vendors –*
E *Whether attestation could be made based on trust – Appropriate punishment – Legal Profession Act 1976, ss. 94(3)(o), 103D(1) – Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994*

The first respondent, an advocate and solicitor, had attested Form 14A of the
F National Land Code for a transfer of land in the absence of the purported vendors and – following a Complaint ('the Complaint') and a disciplinary proceeding moved against him – was found guilty of misconduct under s. 94(3)(o) of the Legal Profession Act 1976 ('LPA') by the appellant's Disciplinary Committee ('DC'), who then recommended that he be suspended from legal practice for a period of six months. Subsequently,
G however, the appellant's Disciplinary Board ('DB'), upon perusal of the recommendation but without giving any reason, enhanced the period of suspension from six months to 12 months ('the DB order'). The first respondent appealed to the High Court against the DB order, arguing that the disciplinary proceedings were flawed as no specific charge had been
H preferred against him, and further that he committed no wrongdoing as the National Land Code had allowed attestations to be made on trust as he did. The arguments however did not find favour with the High Court Judge who dismissed the appeal. The first respondent appealed further, whereupon the Court of Appeal, ruling that the disciplinary proceedings and the DB order
I were null and void for illegality, allowed the appeal. It was the view of the Court of Appeal, in so allowing the appeal, that: (i) the absence of a proper

charge framed against the first respondent had fatally vitiated the disciplinary proceedings before the DC; and (ii) the DC, in holding that the first respondent had acted unprofessionally and was guilty of misconduct for attesting the signatures in question, had acted outside the scope of powers granted to it, which was to inquire into the Complaint of fraud against the first respondent. Dissatisfied, the appellant appealed to the apex court. The issues that arose were: (i) whether the DB and the DC were required to frame a formal charge against an advocate and solicitor appearing for disciplinary proceedings before them; (ii) whether the findings of the DC and the DB fell within the scope of the Complaint; and (iii) whether the DB could enhance the punishment as recommended by the DC without giving any reason for the decision.

Held (allowing appeal and setting aside order of Court of Appeal; suspending first respondent from legal practice for six months)
Per Ramly Ali FCJ delivering the judgment of the court:

(1) There is nothing in the LPA or the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 requiring a charge to be specifically framed or preferred against an advocate and solicitor in disciplinary proceedings, although the advocate and solicitor concerned must be given an opportunity to be heard and shall not be punished without being heard. Also, disciplinary proceedings against a solicitor under the LPA are not proceedings in a criminal court and are not subject to strict adversarial procedure as practised in the criminal court. (paras 29-32)

(2) The first respondent was entitled to know the details of the allegations made against him in the letter of Complaint at the earliest stage, *id est*. before the Investigative Tribunal started its investigation or inquiry. The statements in the letter of Complaint must convey with sufficient clarity and certainty the nature of all the allegations made against him. Further, in considering whether there was any prejudice or denial of natural justice to the first respondent, the court will look at the substance rather than form. (paras 35 & 37)

(3) The first respondent knew fully well the details of the allegations made against him as stated in the Complaint. The record of proceedings showed that the first respondent was represented by counsel at all levels of the proceedings. He also took part in the proceedings and it was clear that he had sufficient notice of all the material facts of the Complaint made against him. His conduct from the very beginning was inconsistent with a person who did not have sufficient knowledge of the Complaint. The absence of a charge specifically framed against him, therefore, did not occasion any procedural unfairness or breach of the rules of natural justice. (para 41)

(4) The authorities of *Abdullah Borhan v. Ketua Polis Melaka & Anor*, *B Surinder Singh Kanda v. The Government of the Federation of Malaya* and *Lim Teng Ee Joyce v. Singapore Medical Council* did not support the argument that a formal charge ought to be framed against the first respondent. *Abdullah Borhan* is based on the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, where reg. 3(1) thereof sets out specifically that a charge shall be framed against the officer concerned, whereas the court here was dealing with an advocate and solicitor under the LPA and there is no express provision either in the LPA or the 1994 Rules mandating such requirement. Likewise, in *Lim Teng Ee Joyce*, the Medical Registration Regulations in Singapore mandated a charge to be framed against a medical practitioner facing disciplinary proceedings thereunder. *B Surinder Singh Kand*a, on the other hand, was a case of a police officer complaining that he was denied a reasonable opportunity of being heard in the disciplinary proceedings, and such issue did not at all arise in the present case. (paras 43-49)

(5) The findings and recommendations made by the DC and the making of the DB order that the first respondent was guilty of conduct unbefitting of an advocate and solicitor under s. 94(3)(o) of the LPA in attesting the said form 14A without the presence of the vendors were within the scope of the Complaint. The Court of Appeal had therefore erred in finding that the first respondent's conduct which the DC found to fall under s. 94(3)(o) of the LPA was not the subject matter of the Complaint or that the DC had acted outside the terms of power granted to it. (para 56)

(6) At the material date, *id est*. 16 May 2014, the DB had the power to enhance the punishment recommended by the DC on the first respondent without giving any reason, as the statutory requirement to give reason was only brought into effect on 3 June 2014 *vide* the Legal Profession (Amendment) Act 2012. (paras 59-62)

(7) The first respondent was in breach of s. 94(3) of the LPA and in the circumstances of this case, a suspension period of six months as recommended by the DC was more reasonable and appropriate. (paras 61 & 63)

Bahasa Malaysia *Headnotes*

Responden pertama, seorang peguam bela dan peguam cara, telah memperakui Borang 14A Kanun Tanah Negara bagi satu serahan milik hartanah tanpa kehadiran penjual hartanah – dan ekoran satu Aduan ('Aduan') dan prosiding disiplin yang dijalankan terhadapnya – telah didapati bersalah melakukan salah laku bawah s. 94(3)(o) Akta Profesion Undang-

Undang 1976 ('APU') oleh Jawatankuasa Disiplin ('JD') perayu yang sekaligus mengesyorkan supaya dia digantung daripada beramal sebagai peguam untuk tempoh selama enam bulan. Syor yang dibuat oleh JD bagaimanapun kemudian diubah oleh Lembaga Disiplin ('LD') perayu, dengan memanjangkan tempoh penggantungan dari enam bulan ke 12 bulan ('perintah LD'). Tiada apa-apa alasan diberi oleh LD bagi keputusannya. Responden pertama merayu ke Mahkamah Tinggi terhadap perintah LD, menghujahkan bahawa prosiding disiplin cacat kerana tiada pertuduhan khusus dirangka terhadapnya dan dia tidak melakukan sebarang kesalahan kerana Kanun Tanah Negara membenarkan perakuan dibuat berdasarkan kepercayaan seperti yang berlaku dalam kes ini. Hujahan bagaimanapun tidak diterima oleh Hakim Mahkamah Tinggi yang menolak rayuan. Responden pertama merayu seterusnya dan Mahkamah Rayuan membenarkan rayuan atas alasan bahawa prosiding disiplin serta perintah LD adalah menyalahi undang-undang dan kerana itu tidak sah dan batal. Mahkamah Rayuan berpandangan, dalam membenarkan rayuan, bahawa: (i) ketiadaan pertuduhan khusus terhadap responden pertama telah memudaratkan prosiding disiplin di hadapan JD; dan (ii) dalam mendapati responden pertama bertindak secara tidak profesional dan melakukan salah laku apabila memperakui tanda tangan-tanda tangan berkaitan, JD telah melangkaui skop kuasa yang diberi kepadanya, iaitu untuk meneliti Aduan penipuan terhadap responden pertama. Tidak berpuas hati, perayu merayu ke mahkamah tertinggi. Isu-isu yang berbangkit adalah: (i) sama ada JD dan LD dikehendaki merangka pertuduhan rasmi terhadap seseorang peguam bela dan peguam cara yang menghadiri prosiding disiplin di hadapan mereka; (ii) sama ada dapatan-dapatan JD dan LD dirangkumi oleh skop Aduan; (iii) sama ada LD boleh menambah hukuman yang disyorkan JD tanpa memberi apa-apa alasan baginya.

Diputuskan (membenarkan rayuan dan mengetepikan perintah Mahkamah Rayuan; menggantung responden pertama daripada beramal selama enam bulan)

Oleh Ramly Ali HMP menyampaikan penghakiman mahkamah:

(1) Tiada apa-apa dalam APU atau Kaedah-Kaedah Profesion Undang-Undang (Prosiding Disiplin) (Tribunal Penyiasatan dan Jawatankuasa Disiplin) 1994 yang mengkehendaki suatu pertuduhan khusus dibentang atau dihadapkan ke atas seorang peguam bela dan peguam cara yang berdepan prosiding disiplin, walaupun peguam bela dan peguam cara tersebut wajib diberi peluang untuk didengar dan tidak boleh dihukum tanpa mendengarnya. Prosiding disiplin terhadap seorang peguam bela dan peguam cara di bawah APU juga bukan seperti prosiding di mahkamah jenayah dan tidak tertakluk pada prosedur ketat adversarial seperti yang diamal di mahkamah jenayah.

(2) Responden pertama berhak mengetahui butir-butir dakwaan yang dibuat terhadapnya dalam surat aduan di peringkat yang terawal, iaitu sebelum Tribunal Penyiasatan memulakan siasatannya. Kenyataan dalam surat aduan hendaklah juga menzahirkan dengan jelas rupa bentuk dakwaan yang dibuat terhadapnya. Selain itu, dalam menentukan sama ada wujud prejudis atau penyisihan keadilan semula jadi terhadap responden pertama, mahkamah akan melihat pada intipati dan bukan bentuk.

(3) Responden pertama mengetahui sepenuhnya butir-butir dakwaan yang dibuat terhadapnya seperti yang tertera dalam Aduan. Rekod prosiding menunjukkan responden pertama diwakili peguam dalam semua peringkat prosiding. Dia juga mengambil bahagian dalam prosiding dan adalah jelas bahawa dia menyedari semua fakta-fakta material berkaitan Aduan yang dibuat terhadapnya. Tingkah lakunya sejak mula tidak konsisten dengan seorang yang tidak mempunyai pengetahuan mencukupi mengenai Aduan. Oleh itu, ketiadaan pertuduhan khusus terhadapnya tidak menyebabkan apa-apa ketidakadilan prosedur atau pelanggaran kaedah keadilan semula jadi.

(4) Autoriti-autoriti *Abdullah Borhan v. Ketua Polis Melaka & Anor*, *B Surinder Singh Kanda v. The Government of the Federation of Malaya* and *Lim Teng Ee Joyce v. Singapore Medical Council* tidak menyokong hujah bahawa satu pertuduhan formal perlu dirangka terhadap responden pertama. *Abdullah Borhan* didasar pada Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai Polis Pangkat Rendah dan Konstabel) 1970, di mana peraturan 3(1) menyatakan dengan jelas bahawa suatu pertuduhan hendaklah dirangka terhadap pegawai terbabit, sedangkan apa yang ditangani mahkamah di sini adalah kes seorang peguam bela dan peguam cara di bawah APU di mana tiada atau apa-apa dalamnya dalam Kaedah-Kaedah 1994 yang mewajibkan keperluan tersebut. Begitu juga, dalam kes *Lim Teng Ee Joyce*, Peraturan-Peraturan Pendaftaran Pengamal Perubatan di Singapura mewajibkan satu pertuduhan dirangka terhadap mana-mana pengamal perubatan yang menghadapi prosiding disiplin di bawah peruntukannya. *B Surinder Singh Kanda*, sebaliknya, adalah kes seorang pegawai polis yang mengadu tidak diberi peluang untuk didengar dalam prosiding disiplin, di mana isu sebegitu langsung tidak berbangkit dalam kes di sini.

(5) Dapatan dan syor yang dibuat oleh JD serta perintah LD bahawa responden pertama, dalam memperakui Borang 14A tersebut tanpa kehadiran penjual adalah bersalah kerana menunjukkan kelakuan yang tidak selayaknya bagi seorang peguam bela dan peguam cara di bawah s. 94(3)(o) APU, adalah termasuk ke dalam skop Aduan. Mahkamah Rayuan dengan itu khilaf apabila mendapati kelakuan responden

pertama yang didapati LD sebagai terangkum di bawah s. 94(3)(o) APU bukan hal perkara Aduan atau bahawa JD telah bertindak luar kuasa-kuasa yang diberikan kepadanya.

(6) Pada waktu material, iaitu 16 Mei 2014, LD mempunyai kuasa menambah hukuman yang disyorkan oleh JD terhadap responden pertama tanpa memberi apa-apa alasan baginya, disebabkan keperluan statutori untuk memberi alasan hanya mula dikuat kuasa pada 3 Jun 2014 melalui Akta Profesion Undang-Undang (Pindaan) 2012.

(7) Responden pertama telah melanggar s. 94(3) APU dan dalam hal keadaan yang wujud, penggantungan enam bulan seperti yang disyorkan oleh JD adalah lebih munasabah dan sesuai.

Case(s) referred to:

Abdullah Borhan v. Ketua Polis Melaka & Anor [2008] 9 CLJ 605 HC ***(dist)***
Albert Chew v. Hong Leong Finance Bhd [2001] 4 CLJ 419 HC ***(refd)***
Aziana Uda Bahari v. Gan Kong You [2009] 8 CLJ 438 HC ***(refd)***
B Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 1 LNS 14 PC ***(dist)***
Cooper v. Wandsworth Board of Works [1861-73] All ER Rep 1554 ***(refd)***
Hj Ali Hj Othman v. Telekom Malaysia Bhd [2003] 3 CLJ 310 CA ***(refd)***
Jerald Allen Gomez v. Shencourt Sdn Bhd; Majlis Peguam (Intervernor) [2006] 1 CLJ 88 HC ***(refd)***
Lau Keen Fai v. Lim Ban Kay [2011] 3 CLJ 213 HC ***(refd)***
Leeson v. General Council of Medical Education and Registration (1889) 43 Ch D 366 ***(refd)***
Lembaga Jurutera Malaysia v. Leong Pui Kun [2008] 6 CLJ 93 FC ***(refd)***
Lim Ko & Anor v. Board of Architects [1996] 2 MLJ 80 ***(refd)***
Lim Teng Ee Joyce v. Singapore Medical Council [2005] 3 SLR 709 ***(dist)***
Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 CA ***(refd)***
Saufee A Rahman v. Che Yussof Che Ngah & Ors [2014] 7 CLJ 691 CA ***(refd)***
Tan Hee Lock v. Commissioner For Federal Capital & Ors And Another Appeal [1973] 1 LNS 152 FC ***(refd)***
Tan Tiang Hin Jerry v. Singapore Medical Council [2000] 2 SLR 274 ***(refd)***
Tanjong Jaga Sdn Bhd v. The Minister of Labour and Manpower & Anor [1987] 2 CLJ 119; [1987] CLJ (Rep) 368 SC ***(refd)***
Yong Nyuk Fang & Anor v. Toh Boon Pin & Ors [2006] 7 CLJ 296 HC ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 152, 153, 154, 173(a)
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994, r. 3
Legal Profession Act 1976, ss. 94(3)(o), 103B, 103D(1), (2)
National Land Code, s. 211
Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, reg. 3(1)
Medical Registration Regulations [Sing], rr. 27(2), 35(1)

A *For the appellant - Sean Yeow & Hoi Jack S'ng; M/s Lee Hishamuddin Allen & Gledhill*
For the 1st respondent - T Gunaseelan & Ramanathan Velu; M/s Rama Velu & Assocs

[Editor's note: For the Court of Appeal judgment, please see Rajehgopal Velu v. Ganashalingam Rajah; Majlis Peguam Malaysia (Intervener) [2015] 8 CLJ 1202 (overruled).]

B *Reported by Wan Sharif Ahmad*

JUDGMENT

Ramly Ali FCJ:

C **[1]** The appellant in the present appeal before us, the Bar Council, Malaysia, was the intervener in the proceedings in the courts below. The first respondent was an advocate and solicitor practising under the name and style of Messrs Rajehgopal Velu & Associates. He was found guilty of misconduct unbefitting of an advocate and solicitor by the Disciplinary Board (the DB) D under s. 94(3)(o) of the Legal Profession Act 1976 (the LPA) and was suspended from practice as an advocate and solicitor for a period of 12 months. His appeal to the High Court was dismissed, but later was allowed by the Court of Appeal. Dissatisfied with the decision of the Court of Appeal, the appellant appealed to this court. Hence the present appeal E before us. We heard and allowed the appeal on 29 June 2016 but with a reduced period of suspension of six months with effect from 21 days from the date of the order with no order as to costs. We shall now give our reasons for the decision.

Factual Background

F **[2]** On 21 July 2013, the second respondent, one Ganashalingam a/l Rajah wrote a letter of Complaint against the conduct of the first respondent, to the DB (the Complaint).

[3] The Complaint was about the first respondent who had attested two G signatures in a property transfer form (Form 14A). The signatures were purportedly those of the late Mdm Maheswari a/p Veerappoo (the mother of the second respondent), and one Mdm Ponnamah a/p Chinniah, as the vendors. The late Mdm Maheswari had already passed away at the time the first respondent attested the alleged execution of the said Form 14A, while H Mdm Ponnamah claimed that she did not at any time sign the said Form 14A. The complainant, in his letter, claimed that there was a 'penipuan' committed by the first respondent. As a result, the complainant had lost the property to one Soo Chee Ming, who was the purchaser as stated in the said Form 14A.

I

[4] An Investigating Tribunal (IT) was appointed on 23 June 2005 to investigate into the matter. The IT had on 29 June 2005, written a letter to the first respondent seeking his written explanation. In his letter of explanation dated 6 July 2015 to the IT, the first respondent stated, among others:

(a) he admitted attesting the Form 14A without the presence of Mdm Maheswari and Mdm Ponnamah;

(b) he did so in trust and reliance on his freelance staff, Rengasamy @ Balasundram a/l Veerappan, whom he had known and trusted for the past ten years;

(c) he was informed by the said Rengasamy @ Balasundram a/l Veerappan that both Mdm Maheswari and Mdm Ponnamah were his relatives/aunts and that they were of old age and were constrained in their physical movement and requested the first respondent to attest their signatures as vendors of the property;

(d) he assumed that the purchaser's solicitor, Abigail Lee Mei Sing of Messrs KL Lim & Lee, had conducted all the necessary inquiries and searches; and

(e) he admitted that he had acted negligently in the circumstances.

[5] The IT heard the Complaint on 2 August 2005, 29 August 2005, 14 September 2005, 29 September 2005 and 17 October 2005, and after considering the first respondent's letter of explanation and giving him every opportunity to cross-examine the witnesses of the complainant (and indeed his solicitor had cross-examined them), recommended that there should be a formal investigation by the Disciplinary Committee (DC) on the matter.

[6] On 20 March 2006, the DC was appointed and heard the Complaint on 20 June 2006 and 28 June 2006. After hearing the parties, the DC made *inter alia* the following findings:

> Apart from the fact that the respondent had attested the signatures of the transferors without seeing them, there is also the question of whether the respondent was involved in the fraud perpetrated on the owners of the property which resulted in the transfer of the property to the purchaser. On this issue, we find that there is insufficient evidence to prove that the respondent has intentionally participated in the fraud perpetrated on the owners of the property.
>
> Notwithstanding that there is insufficient evidence to show that the purchaser has intentionally participated in the fraud, the fact remains that the respondent has acted unprofessionally in attesting the signatures of the owners whom he did not witness actually signing the transfer.

[7] The DC accordingly found the first respondent guilty of conduct unbefitting of an advocate and solicitor under s. 94(3)(o) of the LPA and recommended that he be suspended from practice as an advocate and solicitor for a period of six months.

[8] The DB heard the matter on 20 June 2006 and 28 June 2006 in the presence of the complainant and his counsel as well as the first respondent and his counsel pursuant to s. 103D(2) of the LPA. The DB having agreed with the DC that the first respondent was guilty under s. 94(3)(o) of the LPA, imposed a greater punishment and suspended the first respondent from practice as an advocate and solicitor of the High Court of Malaya for a period of 12 months. The suspension was to take effect 21 days from the date of the order (16 May 2014).

At The High Court

[9] Dissatisfied with the DB's decision, the first respondent appealed to the High Court. At the High Court, the first respondent raised the following issues:

(a) that there was no specific charge framed and preferred against the first respondent in the proceedings (first issue);

(b) that Miss Abigail MS Lee from Messrs KL Lim & Lee was not called to testify and thus giving the first respondent no opportunity to cross-examine this witness and this was a procedural failure as well as breach of natural justice and the court should invoke adverse inference against the complainant (second issue); and

(c) that the National Land Code allows attestation to be made based on trust and, in this case, the first respondent trusted Balasundram who brought him the documents (third issue).

[10] On the first issue, the learned trial judge found that it was not fatal and it did not hamper the defence of the first respondent as he was very much aware of the Complaint against him; and the Complaint itself was a sufficient notice on the matter facing him.

[11] On the second issue, the trial judge found that it was of no consequence to the Complaint faced by the first respondent. The trial judge was of the view that whether Miss Abigail testified or not it did not take away the fact that the first respondent did not deny that he had attested the signatures of the vendors in their absence; and the non-denial of the first respondent amounted to an admission to the Complaint against him in respect of which he was given full liberty to explain, and therefore there was no breach of natural justice.

[12] On the third issue, the trial judge, applying the provisions of s. 211 of the National Land Code and the decision in *Albert Chew v. Hong Leong Finance Bhd* [2001] 4 CLJ 419, held that it was a mandatory requirement for the person authorised to attest a signature to ensure that the instrument in question was signed by the real person before him.

[13] On this issue, the trial judge said: "I could locate no provision in the National Land Code as contended by the plaintiff (first respondent) which allows attestation based on trust and in the absence of the person executing the document."

[14] In the upshot, the trial judge dismissed the first respondent's appeal.

At The Court Of Appeal

[15] The first respondent then appealed to the Court of Appeal against the decision of the High Court. At the Court of Appeal, the first respondent raised two main grounds, namely:

(a) that there was no charge framed against the first respondent before the DC; and

(b) in enhancing the punishment to a suspension of 12 months, from the six months as recommended by the DC, the DB did not give any reasons.

[16] The Court of Appeal allowed the first respondent's appeal on 4 August 2015 and held that a charge must be precisely formulated and framed to include specific accusation against the first respondent who had the right to know and must have notice of the very nature of the allegations against him at the first opportunity.

[17] The Court of Appeal also held that the DC had acted outside the scope of powers granted to it, which was to inquire into the Complaint of fraud, when it held that the first respondent had acted unprofessionally and was guilty of misconduct under s. 94(3)(o) of the LPA in attesting the signatures in question which was not the subject matter of the Complaint. The Court of Appeal was "constrained to hold that the DC's decision is null and void for illegality" and therefore the decision of the DB (including the imposition of the suspension order of 12 months on the first respondent) was also null and void.

Before This Court

[18] Dissatisfied with the decision of the Court of Appeal, the intervener appealed to this court. At the hearing of the appeal before us, parties raised three issues, namely:

(a) whether the DB and the DC are required to frame a formal charge as against an advocate and solicitor in disciplinary proceedings (the first issue);

A (b) whether the findings or decisions of the DC and the DB in the disciplinary proceedings against the first respondent fall within the terms or scope of the Complaint (the second issue); and

(c) whether the DB has the power to enhance the punishment recommended by the DC on the first respondent without giving any reasons (the third issue).

B

[19] It is not in dispute that a letter of Complaint dated 21 July 2003 was sent by the complainant, the second respondent in this appeal, alleging misconduct committed by the first respondent as an advocate and solicitor in attesting the signatures of the alleged vendors one Mdm Maheswari and Mdm Ponnamah in the related form 14A without seeing them sign in his presence.

C

[20] To better understand the true meaning of the Complaint in detail, it is important to reproduce the full content of the letter in its original text in Bahasa Malaysia:

D

Ganashalingam a/l Rajah
No 16, Jalan Dato' Yusof Shahabudin 4,
Taman Sentosa,
41200 Klang,
Selangor Darul Ehsan
Tel: 012-2176860

E

21/7/03

Lembaga Tatatertib Peguam-Peguam
9th Floor, Wisma Maran
28, Medan Pasar,
50050 Kuala Lumpur

F

Tuan,

Per: Aduan Tentang Salahlaku Peguam
Nama: V. Rajehgopal
Tempat Beramal: Rajehgopal Velu & Partners, No. 41, Mezzanine Floor, Wisma Valiappa, Jalan Dato' Hamzah, Klang, Selangor (Tel: 03-33723804)
Penipuan Penyaksian Tandatangan di atas Borang 14A
Pindahmilik Hartanah di bawah hakmilik GM 434, Lot No. 343, Mukim Batang Berjuntai, Negeri Selangor Darul Ehsan
Pemilik-Pemilik asal: Ponnamah a/p Chinniah
Maheswary a/p Veerappoo

G

H

Saya merujuk kepada perkara di atas. Saya mewakili ibu saya, Maheswari a/p Veerappoo yang telah meninggal dunia pada 10.9.94.

I

Dukacita saya maklumkan kepada pihak tuan bahawa peguam yang tersebut di atas telah melakukan satu penipuan dalam menyaksikan tandatangan ibu saya (Maheswari a/p Veerappoo) dan Ponnamah a/p Chinniah bagi pindahmilik ke atas hartanah tersebut di atas.

Dalam borang tersebut, dinyatakan bahawa tarikh beliau menyaksikan Ponnamah A/P Chinniah dan ibu saya menandatangani borang pindahmilik tersebut adalah pada 4.3.02. Sedangkan pada masa itu, ibu saya telah meninggal dunia. Beliau meninggal dunia pada 10.4.94.

Manakala Ponnamah a/p Chinniah tersebut pada bila-bila masa tidak pernah menandatangnai borang pindahmilik tersebut. Oleh itu, tandatangan beliau dan ibu saya tersebut telah dipalsukan. Memandangkan ibu saya telah meninggal dunia pada 10.4.94 dan Ponnamah a/p Chinniah tidak pernah menandatangani borang pindahmilik terebut, maka peguam V. Rajehgopal tersebut telah melakukan satu penipuan bahawa beliau telah menyaksikan Ponnamah a/p Chinniah dan si mati menandatangani borang pindahmilik tersebut.

Akibat daripada pemalsuan tersebut, hakmilik hartanah tersebut telah dipindahkan kepada seorang bernama Soo Chee Ming. Berikutan perkara ini juga, Ponnamah a/p Chinniah tersebut telah membuat laporan polis.

Bersama-sama ini saya lampirkan dokumen-dokumen yang berikut untuk rujukan tuan:

(a) Sesalinan Borang Pindahmilik yang telah didaftarkan pada 31.5.02.

(b) Sesalinan Surat Mati Maheswari a/p Veerappoo.

(c) Sesalinan hakmilik hartanah tersebut yang telah ditukar namanya kepada Soo Chee Ming.

(d) Sesalinan laporan Polis oleh Ponnamah a/p Chinniah bertarikh 23.6.03.

(e) Sesalinan surat kepada Pentadbir Tanah Daerah Kuala Selangor bertarikh 24.6.2003.

(f) Sesalinan Surat Akuan saya bertarikh 30.10.2003.

(g) Sesalinan Kad Pengenalan saya.

Oleh kerana salahlaku oleh peguam tersebut adalah satu kesalahan yang serius saya berharap pihak tuan dapat menyiasat perkara ini dan mengambil tindakan yang sewajarnya terhadap peguam tersebut.

Terima kasih.

[21] In essence, in the said letter of Complaint, the second respondent made the following assertions:

(a) that Mdm Maheswari and Mdm Ponnamah were the registered owners of a piece of landed property;

(b) that on or about 4 March 2002, the property was transferred to one Soo Chee Ming using a Form 14A purportedly signed by the said Mdm Maheswari and Mdm Ponnamah;

(c) that the signatures of Mdm Maheswari and Mdm Ponnamah were allegedly attested by the first respondent, as an advocate and solicitor;

(d) that Mdm Maheswari died on 10 April 1994;

(e) that Mdm Ponnamah did not at any time sign the said Form 14A; and

(f) that by reason of the above, the first respondent had committed a 'penipuan' in saying that the signatures of Mdm Maheswari and Mdm Ponnamah were attested before or in front of him.

First Issue: No Charge Framed

[22] On the first issue, that no specific charge was framed and preferred against the first respondent in the disciplinary proceedings, the learned High Court Judge held that it was not fatal in the present case and it did not hamper the defence of the first respondent as he was very much aware of the Complaint against him. To the learned judge, the Complaint itself was a sufficient notice to the first respondent on the matter facing him.

[23] The Court of Appeal disagreed with the High Court on this issue. The Court of Appeal expressed the view that:

> the disciplinary proceedings initiated against an advocate and solicitor are serious and carry penal consequences such as a fine, suspension or being struck off the Roll of Advocates and Solicitors. Accordingly, we agree with the view in *Abdullah Borhan v. Ketua Polis Melaka & Another (supra)* that the charge in question must be precisely formulated to include the specific accusation against the appellant who has the right to know and must have notice of the very nature of the charge at the first opportunity. This will enable the appellant to be forewarned with clarity and certainty the essential elements or ingredients against him in order to ensure that he can be forearmed in his defence for the purpose of directing all the evidence exclusively to the specific charge (see also the Privy Council's opinion in *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] (PC)). The view is that in a disciplinary process, the respondent is only required to respond to the charge and nothing else was approved in *Lim Teng Ee Joyce v. Singapore Medical Council* [2005] SGHC 129.

[24] Learned counsel for the appellant submitted before us that there was no requirement under the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 (the 1994 Rules) requiring charges to be framed against an advocate and solicitor in disciplinary proceedings; thus an omission to frame a formal charge against the first respondent in the present case would not amount to a breach of the LPA as there cannot be a breach where no such requirement exists. The appellant contended that what was essential was that the first respondent is supplied with sufficient material particulars to enable him to meet the allegations made against him in the Complaint. The appellant cited two authorities to support this point, namely: *Aziana Uda Bahari v. Gan Kong You* [2009] 8 CLJ 438 (High Court) and *Lau Keen Fai v. Lim Ban Kay* [2011] 3 CLJ 213 (High Court).

[25] Learned counsel for the first respondent, on the other hand, submitted that s. 103B of the LPA provides that an inquiry must be carried out into a written Complaint and its findings shall be made expeditiously. It was further submitted "that merely because the word "inquiry" is used in the Legal Profession Act 1976, it does not follow that no charge needs to be framed for the solicitor to answer."

[26] Learned counsel further submitted that the requirement for a charge to be framed was so obvious that Parliament in its wisdom did not think it necessary to say so in express terms. It was also submitted that a solicitor is entitled to know not just the facts he would have to meet but also the appropriate "head" of grave impropriety or misconduct as highlighted in s. 94(3) of the LPA that he had to face in any disciplinary proceedings against him.

[27] It was further submitted by learned counsel that the importance of a charge, in a case of an advocate and solicitor facing disciplinary proceedings under the LPA must be appreciated in the context of the LPA, and the courts in Malaysia and Singapore have emphasised the need and importance of framing a charge in the proceedings. To support his proposition, learned counsel relied on the following authorities, namely: *Yong Nyuk Fang & Anor v. Toh Boon Pin & Ors* [2006] 7 CLJ 296; *Lim Teng Ee Joyce v. Singapore Medical Council* [2005] 3 SLR 709; *Tan Tiang Hin Jerry v. Singapore Medical Council* [2000] 2 SLR 274; *Abdullah Borhan v. Ketua Polis Melaka & Anor* [2008] 9 CLJ 605; *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619; [1995] 1 MLJ 308; and *Saufee A Rahman v. Che Yussof Che Ngah & Ors* [2014] 7 CLJ 691.

[28] Learned counsel also submitted that even though the LPA did not have an express provision for a charge to be framed, common law will come into the picture and supply the deficiency so as not to allow a person be punished without being heard. The case of *Cooper v. Wandsworth Board of Works* (1861-73) All ER Rep 1554 was cited in support of the proposition.

[29] We agree with learned counsel for the appellant that there is no provision in the LPA or the 1994 Rules requiring a charge to be specifically framed or preferred against an advocate and solicitor in disciplinary proceedings.

[30] We also agree that in disciplinary proceedings under the LPA, the advocate and solicitor concerned must be given an opportunity of being heard. This is a basic rule of natural justice which must be observed. The advocate and solicitor concerned shall not be punished without being heard. On this point, the Privy Council in *B Surinder Singh Kanda (supra)* had aptly remarked (which we agree):

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is

made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.

[31] At the outset, it must be stressed that disciplinary proceedings against a solicitor under the LPA are not proceedings in a criminal court of law. The proceedings although *quasi*-judicial in nature need not emulate the strict adversarial procedure practised in a criminal court (see: *Jerald Allen Gomez v. Shencourt Sdn Bhd; Majlis Peguam (Intervenor)* [2006] 1 CLJ 88; [2006] 2 MLJ 343). On this point, we agree with Abdull Hamid Embong J (as he then was), in *Jerald Allen Gormez (supra)* when His Lordship commented: "To say that, in the absence of such procedures, the Disciplinary Committee should adhere strictly to the procedures in the proceedings of a criminal court, would be implying some requirements not intended by statute."

[32] The rules of natural justice in disciplinary proceedings should not be governed by the adversarial system of justice of criminal courts but should be inquisitorial or investigatory in nature. Inquisitorial or investigative proceedings are not inconsistent with the rules of natural justice (see: Federal Court's decision in *Lembaga Jurutera Malaysia v. Leong Pui Kun* [2008] 6 CLJ 93; [2009] 2 MLJ 36).

[33] It is a trite principle that a Disciplinary Committee of a professional body is entitled to conduct its disciplinary hearing in respect of a member of the body in whatever way it deems appropriate provided that the method or manner it adopts is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of natural justice to the member concerned.

[34] In *Lim Ko & Anor v. Board of Architects* [1966] 2 MLJ 80, the Federal Court held, *inter alia*, that the proceedings of disciplinary tribunals or committees conducting an inquiry are by no means bound by the strict rules which apply to criminal trials. A legalistic approach is not appropriate in those proceedings. The same principle was adopted by the Federal Court in *Tan Hee Lock v. Commissioner For Federal Capital & Ors And Another Appeal* [1973] 1 LNS 152; [1973] 1 MLJ 238; *Tanjong Jaga Sdn Bhd v. The Minister of Labour and Manpower & Anor* [1987] 2 CLJ 119; [1987] CLJ (Rep) 368; [1987] 1 MLJ 124; and by the Court of Appeal in *Hj Ali Hj Othman v. Telekom Malaysia Bhd* [2003] 3 CLJ 310; [2003] 3 MLJ 29.

[35] In the present case, we agree that the first respondent was entitled to know the details of the allegations made against him in the letter of Complaint at the earliest stage, ie, before the Investigative Tribunal started its investigation or inquiry. This would enable the first respondent to prepare his explanation and later to be heard at all stages of the proceedings thereafter. The statements in the letter of Complaint must convey with sufficient clarity and certainty on the nature of all the allegations made against him. The first respondent must be able to meet every relevant ingredient of the Complaint and must be given opportunity to contradict them.

[36] In *Lau Keen Fai v. Lim Ban Kay* [2011] 3 CLJ 213, the High Court held:

> (1) The LPA does not provide specifically that the DC is required to frame a charge. Thus an omission to frame a formal charge would not amount to a breach of the LPA. There was no requirement that it ought to be framed in any particular form or that it ought to take the form of a charge framed in a criminal proceeding. What was essential was that the person against whom the misconduct was alleged was supplied with sufficient material particulars to enable him to meet the allegation. Herein, all the requirements of a charge were found in the letter of Complaint that the DB had forwarded to the appellant. The appellant had sufficient notice of the Complaint against him. Despite the absence of a formal charge the appellant was able to meet the Complaint lodged against him. The absence of a charge did not occasion any procedural unfairness or a breach of the rules of natural justice as the appellant had not been deprived of the opportunity to contradict the Complaint.

We agree with the above.

[37] In considering whether there was any prejudice or denial of natural justice to the first respondent, the court is to look at the substance, rather than the form, to determine whether the first respondent had been informed of all the material ingredients and facts relating to the Complaint lodged against him. It does not necessarily mean that it must only be by way of a formal charge framed against him. The first respondent needed to be informed sufficiently of the facts and particulars of the misconduct complained of to enable him to explain and exculpate himself. That is his right and it forms an integral part of the rules of natural justice.

[38] The relevant facts and material particulars that need to be informed to the first respondent are particulars which, if established, are capable of showing the elements of misconduct mentioned in the Complaint. In this respect, we agree with Bowen LJ in *Leeson v. General Council of Medical Education and Registration* (1889) 43 Ch D 366 where he said:

> With respect to the charge made, the charge of which he has noticed, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all.

[39] Our view is that, any Complaint against an advocate and solicitor must comply with the requirements under r. 3 of the 1994 Rules which provides:

> 3. Contents of Complaints
>
> (1) A complaint shall be made in writing by the complainant or his solicitor.

A (2) A complaint shall contain the following:

(a) the full name, identity card or passport number and address of the complainant;

(b) the facts of the complaint;

B (c) copies of any documents that the complainant proposes to rely on in support of his complaint;

(d) the signature of the complainant;

(e) the name and address of the complainant's solicitor, if any.

C **[40]** The Complaint against the first respondent in this case fulfilled all the above requirements under r. 3 of the 1994 Rules. It was sufficient to give opportunity to the first respondent to exercise his right to be heard and to explain and exculpate himself, even though it was not presented in the form of a formal charge. Even if a formal charge is drawn up, such charge would inevitably be a regurgitation of the facts and particulars contained in the letter D of Complaint.

[41] The first respondent in the present case knew fully well the details of the allegation made against him as stated in the letter of Complaint. From the records of proceedings made available to us, we find that the first E respondent was represented by his counsel at all levels of the proceedings. He took part in the proceedings. Based on the details of his participation in the proceedings and his letter of explanation dated 6 July 2005, it is clear that he had sufficient notice of all the material facts of the Complaint made against him. The conduct of the first respondent's right from the beginning, was inconsistent with a person who did not have sufficient knowledge of the F Complaint against him. The absence of a charge specifically framed against him did not occasion any procedural unfairness or breach of the rules of natural justice. He was not prejudiced in any manner. He was not deprived of the opportunity to contradict the Complaint against him.

G **[42]** As stated earlier, there is no requirement either under the LPA or under the 1994 Rules requiring a charge to be framed against the first respondent. The DB and DC was at liberty to proceed with the disciplinary proceedings against the first respondent without having to specifically frame a formal charge against him provided, to borrow the words of Nik Hashim FCJ, in *Lembaga Jurutera Malaysia v. Leong Pui Kun (supra)*, "the procedure H adopted was not in breach of any specific provision of the Act and did not result in a denial of natural justice" to the first respondent.

[43] Apparently, the Court of Appeal in finding that a formal charge needed to be specifically framed against the first respondent was relying on the I authority of *Abdullah Borhan v. Ketua Polis Melaka & Anor* [2008] 9 CLJ 605 where the High Court in Melaka in dealing with disciplinary proceedings against a police officer ruled that "the procedural requirements in drafting a charge meant for a criminal trial would apply with equal force to a disciplinary charge such as in the instant case because both of them share the

common denominator ie, penal consequences"; and "It is trite law that the charge in question must be precisely formulated to include the specific accusation against the plaintiff who has the right to know and must have notice of the very nature of the charge at the first opportunity". The same authority was also relied upon by the first respondent's counsel in his submissions before us in the appeal.

[44] With respect, the Court of Appeal had failed to notice that the disciplinary proceedings in that case were against a police officer based on the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, where reg. 3(1) of the said Regulations sets out expressly a mandatory requirement that "A charge shall be framed in accordance with the offence as prescribed in the Schedule. The charge shall describe the offence briefly and identify the officer with the unlawful act or omission charged". In the present case, we are dealing with disciplinary proceedings against an advocate and solicitor under the LPA. As stated earlier, there is no express provision either in the LPA or the 1994 Rules mandating such requirement. Therefore, the issue of framing a charge such as required under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 does not arise in the case before us and failure to draft such a charge against the first respondent does not amount to a breach of the law or relevant regulations.

[45] The Court of Appeal also relied on the decision of the Privy Council in *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14; [1962] MLJ 169 (PC) to support its finding on the requirement of having specific charge framed against the first respondent.

[46] Our observation is that the Privy Council in that case did not deal with the issue of a charge to be framed against the police officer in the disciplinary proceedings. It is more of a case of a Complaint by the police officer that he was not given a reasonable opportunity of being heard in the disciplinary proceedings against him. On that issue, the Privy Council ruled:

> Applying these principles their Lordships are of opinion that Inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words: "In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal."

[47] The issue in that case was that a copy of the findings of the board of inquiry which contained statements of the witnesses, was only given to the adjudicating officer but not to the officer charged. Similar Complaint does

not arise in the present case before us. In short, that case did not support the Court of Appeal's finding pertaining to the requirement to frame a formal charge against the first respondent in the present case.

[48] The Court of Appeal also relied on the case of *Lim Teng Ee Joyce v. Singapore Medical Council (supra)*, to support its finding on the same issue relating to the framing of a specific charge against the first respondent and that in a disciplinary process, the first respondent is only required to respond to the charge and nothing else. In that case, the court in Singapore was dealing with disciplinary proceedings involving a medical practitioner in Singapore.

[49] It must be noted that it was a mandatory requirement in disciplinary proceedings involving medical practitioners in Singapore that a charge be framed against the practitioner as required under r. 27(2) of the Medical Registration Regulations 2010 in Singapore, and the charge shall first be read out to the practitioner; and that r. 35(1) of the Regulations empowers a disciplinary tribunal to alter a charge or frame a new charge whether in substitution for or in addition to an existing charge at any time before it makes a finding. Clearly, there were statutory provisions mandating such requirement. Again, we find that this authority did not support the Court of Appeal's finding on the issue.

[50] As stated earlier, disciplinary proceedings involving an advocate and solicitor under the LPA or the 1994 Rules cannot be equated to criminal proceedings in a criminal court of law, especially relating to the framing of a formal charge against the accused person. Section 173(a) of the Criminal Procedure Code (the CPC) provides that "when the accused appears or is brought before the court, a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried." The form of a charge, particulars as to time, place and person contained in a charge, and the manner of committing an offence to be stated in a charge are statutorily provided under ss. 152, 153 and 154 of the CPC. These are mandatory statutory requirements provided for by law which must be complied with in criminal proceedings in a criminal court of law. However, there is no such requirement under the LPA or the 1994 Rules relating to disciplinary proceedings involving an advocate and solicitor.

Second Issue: Whether Findings Of The DC And DB Fall Within The Scope Of The Complaint

[51] This issue was touched upon by the Court of Appeal in its judgment. In para. 17 of its judgment, the Court of Appeal ruled as follows:

> In this instance, the DC was appointed to conduct an inquiry into the Complaint pursuant to s. 103B of the LPA 1976. The appellant was exonerated of the Complaint of fraud against him. The finding that the appellant had acted unprofessionally in attesting the signatures in

question was not the subject matter of the Complaint. In our view, the DC had acted outside the terms of power granted to it, which is to inquire into the Complaint of fraud. The DC's finding that the appellant is guilty of misconduct was made for an extraneous purpose (*R Rama Chandran v. Industrial Court* [1997] 1 MLJ 145; *Ranjit Kaur Gopal Singh v. Hotel Excelsior* [2010] 8 CLJ 1). Accordingly, we are constrained to hold that the DC's decision is null and void for illegality.

[52] Learned counsel for the appellant in his written submissions before us submitted as follow:

The findings and recommendation made by the DC and the making of the DB Order were within the scope of the Complaint as they arose from facts based on the Complaint, which were put to and admitted by R1.

The Court of Appeal erred in finding that the unprofessional manner in which R1 attested the signatures on the Form 14A was not the subject matter of the Complaint.

Similarly, although the DC found that there was insufficient evidence to prove that R1 had intentionally participated in the fraud, the undeniable fact remains that R1 had attested the Form 14A without the presence of R2's late mother and Ponnamah.

[53] In order to appreciate and decide on this issue, it is necessary to refer to and read the full contents of the letter of Complaint in question.

[54] The letter of Complaint in itself, does not contain the word "fraud" although the word was used throughout the proceedings right from the beginning by counsel as well the courts below. The gist of the Complaint as can be gathered and understood from the full text of the letter is that, the first respondent as an advocate and solicitor (in its original text) "telah melakukan satu penipuan dalam menyaksikan tandatangan ibu saya (Maheswari a/p Veerapoo) dan Ponnamah a/p Chinniah bagi pindahmilik ke atas hartanah tersebut di atas ... Dalam borang tersebut, dinyatakan bahawa tarikh beliau menyaksikan Ponnamah a/p Chinniah dan ibu saya menandatangani borang pindahmilik tersebut adalah pada 4 Mac 2002. Sedangkan pada masa itu, ibu saya telah meninggal dunia. Beliau meninggal dunia pada 10 April 1999, manakala Ponnamah a/p Chinniah tersebut pada bila-bila masa tidak pernah menandatangani borang pindahmilik tersebut ... maka peguam V Rajegopal tersebut telah melakukan satu penipuan bahawa beliau telah menyaksikan Ponnamah a/p Chinniah dan si mati menandatangani borang pindah milik tersebut". In short, the Complaint was that the first respondent as an advocate and solicitor had attested the relevant Form 14A for the transfer of the land in question without the presence of the late Mdm Maheswari a/p Veerapoo and Mdm Ponnamah a/p Chinniah. The 'penipuan' mentioned in that letter clearly refers to that conduct of the first respondent.

[55] The above Complaint or allegation was not disputed by the first respondent. He admitted attesting the relevant Form 14A without the presence of the two vendors and also admitted that he had acted negligently in the circumstances. His only excuse was that he did so in trust and reliance of his freelance staff, one Rengasamy @ Balasundram a/l Veerapan, whom he had known and trusted for the past ten years.

[56] We therefore agree with learned counsel for the appellant that the findings and recommendations made by the DC and the making of the DB order that the first respondent was guilty of conduct which is unbefitting of an advocate and solicitor under s. 94(3)(o) of the LPA in attesting the said Form 14A without the presence of the vendors were within the scope of the Complaint. The Court of Appeal erred in finding that the first respondent's conduct which the DC found to fall under s. 94(3)(o) of the LPA was not the subject matter of the Complaint and that the DC had acted outside the terms of power granted to it, which was to inquire into the Complaint of fraud. Therefore that finding cannot stand.

Third Issue: Enhancement Of Punishment By The DB Without Giving Reasons

[57] This issue was raised in the first respondent's submissions before us. Counsel for the first respondent submitted that the DB erred in enhancing the punishment against the first respondent of suspension from practice as an advocate and solicitor of the High Court of Malaya from a period of six months as recommended by the DC to a period of 12 months with effect from 21 days from the date of the order (16 May 2014), without giving any reasons. This, according to learned counsel, was in breach of s. 103D(1) of the LPA.

[58] The facts relating to this issue from the records of the proceedings are not in dispute, ie, the DB has not given any reasons for rejecting the DC's recommendation and enhancing the suspension period from six months as recommended by the DC to 12 months. Learned counsel for the first respondent contended that the DB had exceeded its power for failing to give reasons and therefore the order as to the suspension period must fall. Learned counsel relied on the current provisions of s. 103D(1) of the LPA which in effect provides that "After consideration of the report of the Disciplinary Committee, the Disciplinary Board may make an order affirming or rejecting the finding or recommendation of the Disciplinary Committee and if the Disciplinary Board rejects the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall record the reason for the rejection."

[59] We agree that under the current provisions of s. 103D(1) of the LPA, the DB shall record the reasons if it rejects the recommendation made by the DC. It is a mandatory requirement. However, it must be noted that the said requirement was only inserted into the section by an amendment to the LPA *vide* the Legal Profession (Amendment) Act 2012 (Act A1444) which came into effect on 3 June 2014 *vide* P.U. (B) 262/2014. There was no indication that the amendment was to take effect retrospectively.

[60] The disciplinary proceedings on the matter before the DB was conducted on 16 May 2014 (prior to the effective date of the amendment to s. 103D(1) of the LPA). The suspension order was also made on 16 May 2014. At that time, there was no statutory requirement in s. 103D(1) or other provisions of the LPA which required the DB to give and to record its reason if it chooses to reject the recommendation made by the DC. There was no statutory duty or obligation to do so. Therefore, the DB cannot be said to have exceeded its power for failing to give reasons for its rejection of the DC's recommendation.

[61] However, in the present appeal, based on the facts and circumstances of the case, we are of the view that the period of suspension of six months imposed on the first respondent as recommended by the DC, is more reasonable and appropriate. The fact that the first respondent had admitted to his negligent conduct in the matter question and that there was no finding of fraud on his part, coupled with the fact that he was relying on his freelance staff one Rengasamy @ Balasundram whom he had known and trusted for the past ten years should be considered as good mitigating factors for him.

Conclusion

[62] In the upshot, we would answer the issues before us as follows:

(a) the DB and the DC are not required to frame a specific formal charge as against an advocate and solicitor in disciplinary proceedings under the LPA. There is no such requirement under the LPA as well as the 1994 Rules;

(b) the findings of the DC and the DB in the disciplinary proceedings that the first respondent was guilty of conduct which is unbefitting of an advocate and solicitor under s. 94(3)(o) of the LPA fall within scope of the Complaint lodged against him; and

(c) at the material date (16 May 2014) the DB had the power to enhance the punishment recommended by the DC on the first respondent without giving any reasons, as the statutory requirement to give reasons was only brought into effect on 3 June 2014 *vide* the Legal Profession (Amendment) Act 2012 (Act A1444).

[63] We therefore allow the appeal and set aside the order of the Court of Appeal. We hold that the first respondent was in breach of s. 94(3)(o) of the LPA. We make an order that the first respondent be suspended from practice as an advocate and solicitor in the High Court of Malaya for a period of six months to take effect from 21 days from the date of this order. We make no order as to costs (as agreed by the parties).